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In re Application of  
Sunamoto et al.

Application No. 09/936,953

Filed: September 17, 2001

Attorney Docket No. Yanagihara Case  
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**OFFICE OF PETITIONS**

: DECISION ON PETITION

This is a decision on the renewed petition filed January 9, 2009 to withdraw the holding of abandonment pursuant to 37 CFR 1.181(no fee). A petition under 37 CFR 1.137(b) was filed on February 6, 2009.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This above-identified application became abandoned for failure to timely file a proper response after the Board of Patent Appeals and Interferences rendered a decision on October 13, 2006. The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences pursuant to 37 CFR §1.304. Petitioner could have filed an appeal to a Court or a civil action. Petitioner failed to do so. Accordingly, this application became abandoned on December 14, 2006. A Notice of Abandonment was mailed on November 1, 2006.

Petitioner asserts that a reply in the form of an RCE was submitted in response to the Board of Appeals decision on December 13, 2006.

A review of the written record shows the Office received an RCE and the RCE fee on December 13, 2006. The RCE was accompanied by a letter to the examiner. A review of letter shows that applicants are essentially stating they are using the opportunity to present additional test data. The additional test data was not presented on December 13, 2006. Pursuant to 37 CFR 1.114 (c) in addition to a request for continued examination, a submission pursuant to 37 CFR 1.114(c) was required to be submitted on December 13, 2006.<sup>1</sup> The submission of the letter to the examiner did not toll the time period for reply. A request for a suspension of action, an

<sup>1</sup> A submission as used in this section includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability.

appeal brief or a reply brief (or related papers) will not be considered a submission under 37 CFR 1.114. See 37 CFR 1.103 and 1.114(d). The declaration presenting additional data submitted on March 27, 2007 was untimely.

As such, the holding of abandonment was appropriate because a complete timely reply was not submitted.

**Petition Under 37 CFR 1.137(b)**

The petition is **GRANTED**

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$790.00, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 1617 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the submission submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



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Office of Petitions